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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 11th November 2014

No. 8993—IR-(ID)-71/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th September 2014 in I. D. Case No. 7 of 2011 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Shree Gopal Krishna Gosala, Nayabazar, Cuttack and their workman Shri Tharpa Hembram was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 7 OF 2011

Dated the 27th September 2014

Present :

Shri S. K. Sahoo, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of
M/s Shree Gopal Krishna Gosala,
Nayabazar, Cuttack.

.. First Party—Management

And

Shri Tharpa Hembram,
S/o Shri Karan Hembram,
Vill/P.O. Aatanati, P.S. Khunta, Mayurbhanj,
At present : Shree Gopal Krishna Gosala,
Cuttack.

.. Second Party—Workman

Appearances :

Shri Babaji Charan Jena, Advocate

.. For the First Party—Management

Shri Sanjay Kumar Das and

.. For the Second Party—Workman

Shri S. B. Mohanty, Advocates.

AWARD

The Government of Odisha, in the Labour & Employment Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute for adjudication by this Court vide their Order No. 7840—ID-71/2011-LE.

“Whether the action of the Management of M/s Shree Gopal Krishna Gosala, Nayabazar, Cuttack in terminating the service of Shri Tharpe Hembram un-skilled Labour by way of refusal from employment for the period from the 9th February 2008 to 3rd June 2008 is legal and/or justified ? If not, what relief is Shri Hembram entitled to” ?

2. The case of second party workman is that the first party is an Industrial Establishment functioning since 1905 under the name and style of “Shree Gopal Krishna Gosala of Nayabazar, Cuttack-4”. The first party establishment was engaged in producing milk, milk product vermin compost by engaging the workers like the second party. A lot of employees are engaged in different works for the smooth functioning of the Establishment. The first party organisation has also employed workers for production of mango, coconut, banana and selling the same in open market and earned huge profit. To feed the cows, calf, bulla the first party organisation has installed grass cutting machine and other ancillary machines. The workers such as technical and non -technical are paid with salary. The second party workman was working under the management since 2003 continuously and worked for 240 days each year. Initially the second party was engaged as Helper and subsequently he was entrusted with different types of work, but at the time of termination he was assisting Shri Ashok Kumar Behera in grass cutting. While he was cutting grass by the machine he lost his right palm due to accident. He was admitted to the Hospital for treatment. On 9-2-2008 after obtaining fitness certificate from the doctor, when he wanted to join in his duty the management refused his employment. At the time of termination the first party organisation has not complied the provisions of Industrial Disputes Act, 1947. No domestic enquiry was conducted against the second party by the management and he was illegally terminated. However, after a settlement in between him and first party he was allowed to work from the 3rd June 2008. The first party management has not paid the salary to the second party for the period 9-2-2008 to 3-6-2008, Hence, this case.

3. The first party management entered its appearance and filed its written statement. The case of the first party management is that M/s Shri Gopal Krishna Gosala is a Charitable Institution which was formed in the year 1937-38 under the nomenclature ‘Shri Victoria Gorakhni Sabha, Cuttack.’ It was a registered Institution under the Society Registration Act, 1860 bearing certificate No. 1/1937-38. Subsequently the name of the Institution has been changed to “Shri Gopal Krishna Gosala” by certificate bearing registration No. 6124/80 of 1971-72. The first party Organisation is a Voluntary Social Organisation, with an object to protect, preserve cattels who are blind, old, diseased and disabled. The management of M/s Shri Gopal Krishna Gosala is vested on the managing committee and its member. The first party organisation is qualified for deduction under Section 84-G of the Income Tax Act, in the hands of the donor. No financial help is given by the Central Government, State Government or Non-Governmental Organisation. The management of the first party organisation allowed some persons to work under the management without remuneration or with small honorarium. The first party organisation is not an Industry nor the second party was a workman. There is no master and servant relationship in between them. On the application of the second party there was a conciliation proceeding which has been attended by the representative of the first party. The first party contended before the Conciliation Officer that the second party was

operating a grass cutting machine in absence of Shri Ashok Behera, although he was not entrusted for the said work. At the time of operation of the grass cutting machine the second party was under the influence of alcohol and met with an accident. Although the first party was not responsible for the accident the medical expenses for the treatment of the second party was borne by it. After discharge from the nursing home the second party went to his village without any application and remained absent from his duties till 2-6-2008. The management had never issued any termination letter to the second party. The second party was allowed to work under the first party from 4-6-2008. As the second party was absent from his duty from the date of accident that is 3-6-2008 till 4-6-2008, he is not entitled for any money for the principle of “no work no pay”. The second party is not entitled for any relief.

4. In view of rival claim of the parties the following issues are settled :—

ISSUES

(i) “Whether the action of the Management of M/s Shree Gopal Krishna Gosala, Nayabazar, Cuttack in un-skilled Labour by way of refusal from employment for the period from the 9th February 2008 to 3rd June 2008 is legal and/or justified ?

(ii) If not, what relief is Shri Hembram entitled to ?”

5. The workman is examined W.W. 1 and Exts. 1, 2 and 3 are marked. Ext. 1 to 1/e are the certified copy of Ext. 2, 2/1 and 2/2 in I.D. Case No. 15 of 2008 of the learned P.O.I.T., Bhubaneswar. Ext. 2 is the certified copy of Ext. 3, Ext. 3 is the certified copy of Ext 6 of the said I. D. Case. One Shri Subash Ch. Das is examined M.W. 1 on behalf of the first party management.

FINDINGS

6. *Issue Nos. (i) and (ii)*—For the sake of convenience and to avoid repetition both the issues are taken up together for discussion.

7. It is the claim of the second party workman that the first party organisation is an industry and he is a workman under it. On the other hand it is the claim of the first party that the organisation of the first party is a charitable Institution and there is no master and servant relationship in between in and the second party. It is also the case of the first party that no salary is paid to the second party but honorarium is paid to him as he is engaged as volunteer to serve the cattle in the organisation. W. W. 1 in his affidavit evidence at paragraph 1 deposed that since 2003 he is continuously working under the first party organisation and the said organisation is engaged in producing milk, milk product, coconut, mango etc. and earned huge profit by selling the same. Ext. 1 series shows that the first party organisation is engaged in selling coconut, firewood, cowdung, jackfruit etc. to the public for value. Ext. 3 is a letter, dated the 18-12-1999 issued to one Satyabadi Das, President, Gosala Union by the General Secretary of the first party organisation. On perusal of Ext. 3 it is clear that some workmen were engaged by the first party organisation on payment of salary and bonus. From the evidence of W.W. 1 and the documents relied on by him, it is clear that the first party organisation is not a social organisation but an industry and the second party is not a volunteer but a worker. In the written statement it is admitted that the second party was engaged by the first party in its organisation and during such engagement on 3-6-2008 he met with an accident for which he was hospitalised and under treatment. In his evidence W.W. 1 also deposed that due to accident during his work under the first party organisation he sustained injury on his right palm for which he was admitted to hospital and after his recovery when he wanted to join in his duty on 9-2-2008 after obtaining the fitness certificate he was not allowed to join. Admittedly the second party workman

has not filed any document before this Court to prove about his treatment and the period of treatment. However, in his claim statement and also in his evidence he has admitted that on 9-2-2008 he had been to the first party management to join in his duty but, he was refused to work. Admittedly he has not submitted his joining report to the first party organisation through post or any other means when the first party refused him to join in his duty. However, from the copy of the failure report submitted by the Conciliation Officer, Cuttack it is clear that on 11-3-2008 the second party had submitted his complaint before the General Secretary of the first party organisation. Admittedly no action has been taken against the second party by the first party for the unauthorised absence, if any. It is the plea of the management that the second party is not entitled to the claim due to his absence from duty. This plea of the first party is not reasonable and trust worthy. On the other hand it is clear from the materials on record that when the first party management refused him to join his duty on 9-2-2008, the workman had approached the Conciliation Officer and also the General Secretary of the first party organisation. There is no reason why the second party will approach the Conciliation Officer if the first party management was ready to accept to joining of the workman. The evidence of the second party workman is no more reliable and trustworthy. Admittedly the first party has allowed the second party to work since 4-6-2008. It is also the case of the second party that he has been allowed to work by the first party on 3-6-2008. After analysing the materials on record it is clear that the first party had refused employment to the second party from 9-2-2008 to 3-6-2008 and such refusal amounts to illegal termination of service of the second party. The second party is entitled for his salary for the period 9-2-2008 to 3-6-2008. In his claim statement at paragraph 15 the second party has not mentioned his monthly salary at the time of his termination. However, in his evidence at paragraph 16 he has deposed that he was getting Rs. 2,100 as salary per month. There is no contrary evidence on record relating to the monthly salary of the second party. Nothing has been elicited from the evidence of W.W. 1 during cross-examination that he was drawing less salary than Rs. 2,100. The refusal of employment of the second party for the period from 9-2-2008 to 3-6-2008 being not legal and justified, the workman is entitled to get his salary for the above period.

8. The first party management is directed to pay the salary of the second party workman for the period 9-2-2008 to 3-6-2008 at the rate of Rs. 2,100 per month within one month of publication of the Award, failing which it will be liable to pay the interest at the rate of 10% per annum on the money due to the second party.

Dictated and corrected by me.

S. K. SAHOO
27-9-2014
Presiding Officer
Labour Court
Bhubaneswar

S. K. SAHOO
27-9-2014
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government
